

MEMORANDUM

DATE: July 27, 1998

TO: **ALL CHIEF CIRCUIT JUDGES**
cc: **FAMILY DIVISION JUDGES**
FRIENDS OF THE COURT
FAMILY DIVISION ADMINISTRATORS
CIRCUIT COURT ADMINISTRATORS
WALLACE DUTKOWSKI, DIRECTOR, OFFICE OF CHILD
SUPPORT

FROM: John D. Ferry, Jr., State Court Administrator

SUBJ: **SCAO Administrative Memorandum 1998-09**
Family Division Policy 1998-FD-03
Surcharge on Support Arrears

Section 19 of the Friend of the Court Act (MCL 552.519; MSA 25.176(19)) provides that the State Court Administrative Office, Friend of the Court Bureau develop procedures for operation of Friend of the Court offices. MCL 552.503(6); MSA 25.176(6) states that each Friend of the Court shall take all necessary steps to adopt office procedures to implement this Act, supreme court rules and recommendations of the bureau.

Federal Regulation (45 CFR 302.75) establishes provisions and prescribes requirements for states to impose late payment fees on absent parents who owe overdue support. In Michigan, Public Act 141 of 1995 amended the support and parenting time enforcement act, 552.602; MSA 25.164(2) and MCL 552.603; MSA 25.164(3), by adding section 3a, which provides for a surcharge on support payments that are past due.

Effective January 1, 1996, the support and parenting time enforcement act requires a surcharge of eight percent (8%) on of each year be added to support payments that are past due as of January 1 and July 1. The surcharge shall not be added to support ordered under the paternity act for the time period to the date of the support order. The amounts shown due

on Friend of the Court records as of each January 1 and July 1 each year are to be reduced by an amount equal to two weeks support, for purposes of assessing the surcharge.

The original model policy was developed after input from workgroups comprised of representatives from Circuit Court, Friend of the Court offices, the Office of Child Support, and the State Court Administrative Office. This updated Family Division Policy replaces the Friend of the Court Bureau Model Policy and Procedures Memo 1995-1, and includes statutory changes and requirements for interstate cases. These guidelines are for implementation of surcharge on support arrears pursuant to the Section 3a of the Support and Parenting Time Enforcement Act.

Should you have any questions regarding this policy contact Sharon K. Deja, Manager, Friend of the Court Bureau at (517) 373-5975.

UPDATED FAMILY DIVISION POLICY SUPPORT SURCHARGE

1. Notice requirements:

The support and parenting time enforcement act does not require a notice regarding surcharge be sent to either party. However, notice should be provided so that parties are aware of the statutory charge. Providing a notice in each local Friend of the Court Handbook will inform parties of the surcharge. The notice should help alleviate complaints from payers, and potentially encourage additional payment on arrears prior to January 1 and July 1.

2. Surcharge

Effective January 1, 1996, the support and parenting time enforcement act requires that a surcharge at an 8% annual rate be applied each January 1 and July 1 on any past due support amount reduced by an amount equivalent to two weeks of support. The surcharge rate of 8% annually equals a semi-annual rate of **3.92304%**, which is to be charged each January 1 and July 1. (Example: if the bi-weekly support order amount is \$100.00, and the arrearage as of January 1 or July 1 is \$500.00, the surcharge should be calculated by multiplying the surcharge rate of .0392304 times \$400.00 [\$500.00 arrears minus two weeks' support obligation, or \$100.00], for a surcharge amount of \$15.69).

3. Interest

MCL 552.603(7); MSA 25.164(3)(7) provides that a support order shall not accrue interest.

4. Retroactive Adjustments

No surcharge will accrue on retroactive **increases** until the following surcharge period. This policy does not apply to orders entered before the surcharge date, but not processed until after the surcharge date. For example, if an order is entered in February, retroactive to November, the surcharge would not be applied until the following period (July 1). However, if an order is entered in November, but not received and processed until February, the surcharge would apply to arrearage which accrued between November and January 1.

The Friend of the Court is not obligated to calculate surcharges on retroactive **decreases**, until the next surcharge date, unless it is specified in the order with a specific amount of surcharge credit to be given. This places the obligation of determining the surcharge credit due, if any, upon the preparer of the order rather than the Friend of the Court being tasked with having to calculate these changes.

5. **Parenting Time and Direct Payment Credits**

The Friend of the Court office should establish a policy requiring parenting time credit requests, or credits for direct payments be supplied to the FOC within 6 months. In that way, account arrears will not have to be adjusted for more than one cycle. That policy will provide safeguards, so that amounts submitted for tax offsets and overall account accuracy may be assured. It also eliminates clients "holding" such credits for several months or years before requesting credit.

6. **Confinement and/or Alimony in Gross**

The surcharge should not be applied to the total of lump sum amounts which have been ordered and not paid, but only upon that portion which is **overdue, or in arrears**. For example, if an individual is ordered to pay \$2000 in confinement expenses at the rate of \$5 per week, the surcharge would only apply against the arrearage which accrued at the rate of \$5 per week and which is past due. The exception to this is that if an individual is ordered to pay the amount in a lump sum, and the intent of the order is that the lump sum be paid forthwith, the entire lump sum would incur a surcharge.

7. **Interstate Cases**

Surcharge can only be assessed on amounts shown as due and owing on the records of the friend of the court. Therefore, surcharge can only be applied to interstate cases where the friend of the court is the official custodian of the records (issued order and retains continuing exclusive jurisdiction. Michigan statutes regarding surcharge can not be applied in cases where Michigan did not issue a support order and does not have continuing exclusive jurisdiction. Section 605 of the Uniform Interstate Family Support Act (MCL 552.1605; MSA 25.233(605)) states that the issuing state's law governs the nature, extent, and amount of current payments, and other obligations of support, and the payment of arrearages. The act also requires that Michigan recognize the continuing exclusive jurisdiction by another state until the act's requirements are met, and Michigan assumes continuing exclusive jurisdiction upon entry of a new support order.

Case Classification Code types **DF, DI, DW, TI, UC, UD, UF, UI, UO, and UW** are to be excluded from the surcharge. No support orders should have been issued by Michigan under these classification types.

Case Classification Code types **UE** and **UM** should be assessed surcharge only after Michigan has issued an order establishing support or lawfully modified an order issued in another state, thereby assuming continuing exclusive jurisdiction.

Case Classification Code type UN should be generally excluded from surcharge. However, if under section 631 of the Uniform Interstate Family Support Act (UIFSA) an order originally “registered for enforcement only” is later modified, assess surcharge only after Michigan has issued an order lawfully modifying the controlling support order, thereby assuming continuing exclusive jurisdiction.

In all cases where Michigan has entered an earlier support order (e.g. in divorce, family support, paternity cases, etc.) and another state issues an order and assumes jurisdiction, under the Uniform Interstate Family Support Act (MCL 552.1224 and MCL 552.1637) that state’s order must be recognized and current support charges stopped; arrearages accruing prior to the modification can be enforced and a surcharge assessed.

8. Tax Intercepts

Tax Intercepts received but not yet posted (specifically joint federal income tax intercepts) would not be considered as receipted until the 6 month time frame elapses. A surcharge would accrue on the entire arrearage due.

9. Pre-Judgment Arrears

No surcharge is to be applied on pre-judgment arrears under a Paternity Order. A separate account may have to be created for existing Paternity Orders (and those orders reviewed individually to determine pre-judgment arrears) and future Paternity Orders.

10. Bankruptcy

The surcharge is to be applied to cases even if a bankruptcy action has been filed. Child support and the surcharge which is statutorily defined as child support, is a non-dischargeable debt asserted against the bankruptcy debtor and not against the bankruptcy estate. The general rule that a creditor is allowed interest on a debt only to the time a petition is filed has no application to support arrears. See Bruning v United States (1964) 376 U.S. 358, 360, 84 S.Ct. 906, 907, 11 L. Ed. 2d 772; In re Ridder, 171 B.R. 345 (Bkrtcy. W.D. Wis. 1994); In re Jordan, 146 B.R. (D. Colo. 1992).